

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0848**

In the Matter of the SIRS Appeal by Professional PCA Services LLC.

**Filed April 24, 2023  
Affirmed  
Larson, Judge**

Minnesota Department of Human Services  
File No. 37033

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Keith Ellison, Attorney General, João C.J.G. de Medeiros, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Department of Human Services)

Considered and decided by Reilly, Presiding Judge; Reyes, Judge; and Larson, Judge.

**NONPRECEDENTIAL OPINION**

**LARSON, Judge**

In this administrative appeal, relator Professional PCA Services, LLC (PPS) challenges respondent Minnesota Department of Human Services's (DHS) order determining PPS committed abuse in connection with the provision of personal-care-assistance services to public-assistance recipients. On appeal, PPS argues DHS: (1) improperly held PPS responsible for overpayments incurred under previous ownership and (2) arbitrarily and capriciously determined the overpayment amount. We affirm.

## FACTS

Minnesota participates in the federal Medicaid program, which funds medical assistance (MA)<sup>1</sup> for individuals who are unable to pay for their medical care. *See generally* 42 U.S.C. §§ 1396-1396w (2022); Minn. Stat. §§ 256B.01-.851 (2022). DHS administers and oversees the Medicaid program through the Minnesota Health Care Programs (MHCP). *See* Minn. Stat. § 256B.04, subd. 10; Minn. R. 9505.0011 (2021). As part of its oversight, DHS created an internal unit, called the Surveillance and Integrity Review Section unit (SIRS). SIRS reviews and monitors legal compliance when DHS pays vendors or recipients for MA-eligible services under the MHCP. *See* Minn. R. 9505.0180, subp. 3, .2160, subp. 1 (2021). If SIRS establishes fraud, theft, abuse, or error by a preponderance of the evidence, DHS may impose sanctions and order overpayment recovery. *See* Minn. Stat. § 256B.064, subd. 1a; Minn. R. 9505.2245, subp. 1 (2021); Minn. R. 1400.7300, subp. 5 (2021).

PPS provides personal-care-assistance services to MA-eligible individuals and participates in the MHCP. SIRS began investigating PPS in January 2017. SIRS performed two onsite visits in November 2017 and July 2018, reviewing and scanning recipient files. After reviewing the documents, SIRS determined that, between October 1, 2016, and December 31, 2017, PPS engaged in abuse, as defined in Minn. R. 9505.2165,

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<sup>1</sup> “Medical assistance” means “payment of part or all of the cost of the care and services identified [by statute] . . . for eligible individuals whose income and resources are insufficient to meet all of this cost.” Minn. Stat. § 256B.02, subd. 8 (2022).

subp. 2(A) (2021),<sup>2</sup> in the form of missing or incomplete documentation.<sup>3</sup> SIRS determined this abuse resulted in PPS receiving overpayment.

Between the two onsite visits, in May 2018, Abdirsirak Abdulle entered an agreement to purchase PPS from its previous owner (the purchase agreement). Abdulle and the previous owner agreed that they would complete the ownership transfer when DHS approved PPS's MHCP application under new ownership.<sup>4</sup> That same day, PPS started the MCHP application process, submitting DHS form 5550 (Provider Entity Sale or Transfer Addendum). Under "effective date," PPS wrote, "as soon as approved." On the form, PPS confirmed that it would "keep the [provider-identification number] established for this entity."<sup>5</sup> Maintaining the same provider-identification number enabled PPS to continue

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<sup>2</sup> "Abuse" means "a pattern of practices that are inconsistent with sound fiscal, business, or health service practices, and that result in unnecessary costs" to the MHCP. Minn. R. 9505.2165, subp. 2(A). Specific practices considered "abuse" include failing to develop and maintain health-service records as required under Minn. R. 9505.2175 (2021), and repeatedly failing to comply with the requirements of the provider agreement that relate to the programs covered by Minn. R. 9505.2160-.2245 (2021). PPS does not contest DHS's finding that PPS engaged in abuse between October 1, 2016, and December 31, 2017.

<sup>3</sup> Specifically, SIRS found: (1) "PCA time sheets were missing for corresponding dates of service"; (2) "PCA time sheets reviewed were missing required elements"; (3) a "[r]ecipient was inpatient"; (4) "PCA services were billed more units than documented"; and (5) "[r]ecipient care plans were either not completed or missing required components."

<sup>4</sup> The purchase agreement also included: (1) a clause warranting that the previous owner was not aware "of any fraud, false claims or other activities . . . that would interfere with Company activities or reimbursement for services provided" and (2) an indemnification clause.

<sup>5</sup> There are two types of provider identification numbers relevant to this appeal: National Provider Identifiers (NPI) and Unique Minnesota Provider Identifiers (UMPI). The primary distinction between the two is the entity assigning them; the federal government assigns NPIs and DHS assigns UMPIs. A vendor may enroll in MHCP using either an NPI or UMPI. PPS obtained an NPI under its previous owner, which PPS continued to use through December 2020, despite PPS applying for a UMPI in November 2018. For

collecting MCHP payments before DHS approved the application. Also in May 2018, PPS submitted a DHS form 5259 (Disclosure of Ownership and Control Interest of an Entity) noting that as of May 1, 2018, Abdulle owned a 100% interest in PPS.

In November 2018, PPS submitted a new form 5550. This form again attached the effective date to DHS's approval. This time, PPS checked a box providing that PPS would change its provider-identification number. This checked box also stated, "All claims payments and claims adjustments will accrue to the entity under whose [provider-identification number] claims were submitted." Along with the new form 5550, PPS included an MHCP enrollment application, including a new Federal Employer Identification Number (FEIN), a new Minnesota tax number, and a statement that PPS would change its provider-identification number. DHS and PPS then engaged in a drawn-out process related to PPS's MHCP application.

In March 2020, DHS issued a notice of overpayment to PPS, regarding the overpayments between October 1, 2016, and December 31, 2017. PPS timely appealed the notice of overpayment. In its appeal letter, PPS claimed it was not responsible for the overpayments because it had changed ownership since the alleged abuse. In May 2020, DHS amended the notice to update the alleged overpayment amount to \$634,303.47.

On August 20, 2020, DHS finally approved PPS's MHCP application and provided PPS a new provider-identification number. DHS made its approval retroactive to March

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purposes of this appeal, NPIs and UMPIs are collectively referred to as a "provider-identification number."

6, 2020. However, as PPS requested,<sup>6</sup> DHS set the effective date for the new provider-identification to December 2020. Between PPS's initial MHCP application and the agreed-to effective date, DHS paid PPS approximately \$4.5 million in MA reimbursements under the former provider-identification number, despite PPS's new ownership.

An Administrative Law Judge (ALJ) held a two-day evidentiary hearing in August 2021 to address PPS's challenge to the overpayment notice. The ALJ heard testimony from several DHS employees and Abdulle. DHS specifically offered testimony regarding overpayments associated with three recipients that lacked necessary documentation. DHS relied only on exhibits to support the remainder of its claimed overpayments. The exhibits included "close to 800 pages of spreadsheets 'summarizing' the claims" (the summary spreadsheets) and more than 12,000 pages of copies of recipient files" (the underlying documentation). A senior SIRS investigator<sup>7</sup> testified regarding how SIRS determined the overpayment amount.

Regarding the exhibits, the ALJ required DHS to provide a means to match the recipient claims in the summary spreadsheets with the underlying documentation. When DHS complied, it realized it had omitted underlying documentation supporting claimed overpayments for 12 recipients listed in the summary spreadsheets. DHS moved to supplement the record to include these records. The ALJ denied the motion because "it

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<sup>6</sup> PPS made that request because its personal-care assistants were not affiliated with the new provider-identification number.

<sup>7</sup> The senior SIRS investigator attended the onsite visit in July 2018 but did not attend the onsite visit in November 2017.

would be unfair to PPS to delay the hearing while it reviewed thousands of pages that [DHS] should have known were missing and could easily have provided sooner.”

Relevant to this appeal, at the hearing, PPS argued that it was not responsible for any overpayment because it had changed ownership since the alleged abuse. DHS responded that PPS’s ownership was irrelevant to whether DHS may obtain monetary recovery from PPS. DHS also argued that the missing documents for 12 recipients did not negate overpayment because the summary spreadsheets were admissible under Minn. R. Evid. 1006.

On January 7, 2022, the ALJ issued findings of fact, conclusions of law, and a recommendation that DHS issue an amended notice requiring PPS to repay \$335,337.92. The ALJ determined that DHS did not establish by a preponderance of the evidence that it could recover the full \$634,303.47 claimed overpayment amount, because DHS lacked any documentary evidence for overpayment claims related to 12 recipients and presented limited evidence relating to two other recipients. The ALJ also recommended that DHS hold PPS responsible for the proven overpayment amounts despite the ownership change.

On May 19, 2022, the DHS commissioner issued her final order. The commissioner agreed with the ALJ’s recommendation that PPS was responsible for overpayments despite the ownership change. But the commissioner departed from the ALJ’s recommendations with respect to the overpayment amount. The commissioner instead found that DHS had established by a preponderance of evidence that it may recover overpayment totaling \$405,367.33, because it met its burden regarding three of the 12 recipient files the ALJ said lacked any documentary evidence. The commissioner relied on the senior SIRS

investigator's testimony regarding the three recipient records collected at the July 2018 onsite visit, because the senior SIRS investigator personally attended the visit and scanned the documents reflected in the summary spreadsheets. The commissioner, thus, increased the overpayment amount by \$70,029.41 from the ALJ's recommendation.

PPS appeals.

## DECISION

PPS appeals the commissioner's order determining PPS committed abuse and is, thereby, responsible for overpayment amounting to \$405,367.33. PPS argues the commissioner: (1) erred when she determined PPS is responsible for overpayments incurred under previous ownership and (2) acted arbitrarily and capriciously when she did not adopt the ALJ's recommended overpayment amount.

We review an administrative agency's decision following a contested-case hearing under the Minnesota Administrative Procedure Act, Minn. Stat. §§ 14.63-.69 (2022). We may reverse or modify any agency's decision

if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Minn. Stat. § 14.69. Relators have the burden of proof when challenging an agency decision. *In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 289 (Minn. App. 2010).

## I.

While conceding PPS engaged in abuse between October 1, 2016, and December 31, 2017, PPS argues that it is not responsible for the overpayment because PPS became a different “vendor.” PPS’s argument presents a legal question, which we review *de novo*. *In re Waters*, 977 N.W.2d 874, 885 (Minn. App. 2022).

Under Minn. Stat. § 256B.064, DHS “may obtain monetary recovery *from a vendor* who has been improperly paid” as a result of abuse. Minn. Stat. § 256B.064, subds. 1a(a)(1), 1c(a) (emphasis added). The term “vendor” shares its meaning with “vendor of medical care” as defined in Minn. Stat. § 256B.02, subd. 7. Minn. R. 9505.2165, subp. 16a. The term “vendor” is not limited to humans, it also applies to corporate entities. Minn. Stat. § 256B.02, subd. 7 (defining “[v]endor of medical care,” in part, as “any person or persons furnishing, within the scope of the vendor’s respective license, any or all [medical] goods or services [enumerated in this subdivision]”); Minn. Stat. § 645.44, subd. 7 (2022) (“‘Person’ may extend and be applied to bodies politic and corporate, and to partnerships and other unincorporated associations.”). The term “vendor” also includes “a provider,” Minn. R. 9505.2165, subp. 16a, meaning a vendor “that has signed an agreement approved by [DHS] for the provision of health services to a recipient,” Minn. R. 9505.0175, subps. 38, 50 (2021).

As an LLC, PPS operates as “an entity distinct from its members.” Minn. Stat. § 322C.0104 (2022); *see also* Minn. Stat. § 322C.0304, subd. 1 (2022) (establishing “[t]he debts, obligations, or other liabilities of a limited liability company . . . are solely the debts, obligations, or other liabilities of the company”). DHS’s records show that PPS listed



itself, not its owners, as the “provider” receiving funds through MHCP. PPS was, therefore, the vendor who committed abuse and was improperly paid MHCP funds between October 1, 2016, and December 31, 2017. Minn. Stat. § 256B.064, subd. 1c(a). And the record shows PPS continued to collect MA reimbursements under the former provider-identification number until December 2020. Thus, when DHS sent the notice of overpayment in March 2020, PPS was the same vendor that committed the abuse and improperly collected the MHCP funds.

PPS disagrees, arguing it took sufficient steps to convert PPS into a new vendor that is not responsible for the overpayment. To support its argument, PPS cites Minn. Stat. § 256B.0641, subds. 1, 2. PPS first argues section 256B.0641, subdivision 1, illustrates that an entity becomes a new vendor when it obtains a new tax-identification number. We disagree. Section 256B.0641, subdivision 1, provides a mechanism for DHS to recover overpayment after an administrative determination. Under section 256B.0641, subdivision 1(4), DHS can collect a “*past due obligation*[]” from “a provider or vendor that has the same tax identification number as is assigned to a provider or vendor with past due obligations.” (Emphasis added.) Here, DHS does not seek to collect past-due obligations. Instead, DHS issued a final order determining PPS—as a vendor—committed abuse that resulted in overpayment. Thus, section 256B.0641, subdivision 1, is inapplicable to this case.

PPS next argues section 256B.0641, subdivision 2, indicates that new owners<sup>8</sup> are not responsible for overpayments. Section 256B.0641, subdivision 2, specifically provides when DHS can pursue overpayment from “[t]he current owner of a nursing home, boarding care home, or intermediate care facility.” But again, this provision is inapplicable to this case because DHS has not pursued collecting overpayment from PPS’s owner. Instead, DHS has administratively determined that PPS—the entity—committed abuse that resulted in overpayment. Additionally, PPS is a personal-care-assistance provider, not “a nursing home, boarding care home, or intermediate care facility.” Minn. Stat. § 256B.0641, subd. 2. Thus, section 256B.0641, subdivision 2, is also inapplicable to this case.

Finally, PPS argues that DHS’s later decision to assign PPS a new provider-identification number frees PPS from the responsibility for the overpayment.<sup>9</sup> We are not persuaded. DHS makes clear throughout its forms regarding ownership transfer that there are consequences if a new owner allows a provider-entity to use an existing provider-identification number. For example, form 5550 notes that use of the established provider-identification number will lead to “all claims payments and claims adjustments” accruing

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<sup>8</sup> We agree with the ALJ that “[i]f Mr. Abdulle and [the previous owner] have a dispute between themselves as to responsibility for payment of the LLC’s debts, that is a matter between them to take to district court.”

<sup>9</sup> PPS also challenges that DHS served the notice of overpayment on Abdulle. But DHS requires organizations participating in MHCP to inform DHS anytime a change in ownership or a control interest occurs. In May 2018, PPS submitted the form 5259 to DHS noting that, as of May 1, 2018, PPS’s ownership and control interest had changed, with Abdulle owning a 100% interest in PPS. On this form, PPS listed the former provider-identification number. Thus, DHS appropriately served Abdulle with the notice of overpayment, because he held himself out as the appropriate contact for PPS based on its ownership structure.

to the “transferee” or “the entity under whose [provider-identification number] claims were submitted.”

Here, PPS decided to continue using the former provider-identification number from May 2018 through December 2020. And this decision was lucrative; PPS collected approximately \$4.5 million in MA reimbursements during that time. Thus, at the time DHS issued the notice of overpayment in March 2020, PPS continued to operate as the same vendor that committed the abuse and improperly collected the MHCP funds. DHS appropriately sent the notice of overpayment to the entity using the corresponding provider-identification number, and PPS remains responsible for the overpayment.<sup>10</sup>

We, therefore, affirm the commissioner’s decision that PPS was the appropriate “vendor” and responsible for the abuse that resulted in overpayment.

## II.

PPS argues the commissioner acted arbitrarily and capriciously when she increased the overpayment amount from the ALJ’s recommendation. An agency’s decision is arbitrary and capricious only if it:

- (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem;

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<sup>10</sup> DHS concedes that there is an administrative avenue for new owners to have a “clean break” when obtaining an existing entity. If an owner stops the provider-entity from using the former provider-identification number, obtains new tax-identification numbers, submits a new MHCP enrollment application, and *waits until it has a new provider identifier before submitting claims for reimbursement of MHCP funds*, DHS will recognize the entity as a new provider. See Minn. R. 9505.0195 (2021) (detailing the terms for provider participation in MHCP). But where, as here, the provider continues to operate—and, in fact, collects approximately \$4.5 million in MA reimbursements—while waiting for DHS to approve the new application, the entity remains the same provider for purposes of overpayment claims.

- (c) offered an explanation that runs counter to the evidence; or
- (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise.

*Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs*, 713 N.W.2d 817, 832 (Minn. 2006). An "agency's conclusions are not arbitrary and capricious so long as a rational connection between the facts found and the choice made has been articulated." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001) (quotation omitted). We do not apply a heightened standard of review where the agency's final decision differs from the ALJ's recommendation. *Id.* at 278. But an agency's failure to give reasons for its rejection of the ALJ's recommendation may be evidence that the agency acted arbitrarily and capriciously. *In re Grand Rapids Pub. Utils. Comm'n*, 731 N.W.2d 866, 870 (Minn. App. 2007).

Here, the commissioner thoroughly explained her decision to increase the overpayment amount. The commissioner disagreed with the ALJ regarding the importance of the senior SIRS investigator's testimony and the summary spreadsheets. As the commissioner noted, evidentiary rules are more relaxed in contested-case hearings. Minn. Stat. § 14.60, subd. 1 (2022) ("In contested cases agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs."); Minn. R. 1400.7300, subp. 1 (2021) ("The [administrative law] judge may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs."). Applying the more lenient evidentiary rules, the commissioner determined the senior SIRS investigator credibly

testified regarding her observations and methods when personally collecting materials during the July 2018 onsite visit. The commissioner decided the senior SIRS investigator could act as a foundational witness for the recipient materials reflected in the summary spreadsheets from that date. Thus, the commissioner determined DHS needed to increase the overpayment amount by \$70,029.41 to reflect the additional three recipients DHS proved by a preponderance of the evidence.

The commissioner's decision reflects a "rational connection between the facts found and the choice made," *Excess Surplus*, 624 N.W.2d at 277 (Minn. 2001) (quotation omitted), reasonably relying on the spreadsheets, which were explained through the senior SIRS investigator's testimony, to increase the overpayment amount. Therefore, the commissioner did not engage in arbitrary and capricious decisionmaking when she increased the ALJ's recommended recovery amount by \$70,029.41.

**Affirmed.**